April 8, 2022

Submitted via Regulations.gov

Reference: SSBCI Interim Final Rule Comments

Office of Recovery Programs
State Small Business Credit Initiative Program
United States Department of the Treasury
1500 Pennsylvania Avenue NW
Washington, DC 20020

RE: TREAS-DO-2022-0005-0001 - State Small Business Credit Initiative: Demographics-Related Reporting Requirements

To Whom It May Concern:

The Council of Development Finance Agencies (CDFA) and its State Small Business Credit Initiative (SSBCI) Coalition write to provide comments in response to the U.S. Department of the Treasury's (Treasury) Interim Final Rule on Demographics-Related Reporting Requirements (IFR) for the SSBCI program. CDFA is a national membership association dedicated to the advancement of development finance concerns and interests. More than 100 CDFA member organizations participate in the SSBCI Coalition, including state agencies responsible for administering local SSBCI programs as well as leading private and non-profit practitioners with deep expertise serving small businesses and in the SSBCI program.

Detailed responses to the IFR reflect the following broad concerns:

- The requirements create undue administrative burden and complexities which will likely discourage financial institutions and other financiers from participating in the SSBCI program.

- SSBCI capital recipients can opt out of responding if they are not self-qualifying as a SEDI business. Given the nature and vast number of data elements requested, small businesses are less likely to respond when presented with the option. This in turn will result in an incomplete data set at the program-level, which begs the question of the extent to which the data set is useful to program officials and policy makers.

- Small businesses owners that have historically been underserved by mainstream capital markets may be discouraged from seeking SSBCI financing due to the specter of disclosing the information requested.

- There is no guarantee that the data collected will remain confidential. If the data becomes available at the transaction-level, the small businesses may face a real or perceived risk that disclosed information will influence future credit-decisions and limit access to capital.

CDFA and the SSBCI Coalition appreciate the opportunity to provide our response and the following recommendations. We also appreciate the work of Treasury staff in considering amendments to the IFR based on the recommendations provided. Please contact Toby Rittner, Katie Kramer and Rachel Reilly for more information about tactical details pertaining to the recommendations provided.

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Detailed Response

As the IFR is currently written, the probative value of the information being sought is far outweighed by the likelihood that its collection will diminish the effectiveness of the program.

1) **The proposed Demographic-Related Reporting Requirements create undue administrative burden and complexities which will likely discourage financial institutions and other financiers from participating in the SSBCI program.**

   The reporting requirements outlined in the IFR require 23 data elements per business and 43 per business principal. If a small business has four principals, then 195 data elements would need to be collected, aggregated and reported for that one transaction. The collection of such a high number of data elements puts an additional, and perhaps unnecessary, burden on small businesses, financial institutions and other financiers, as well as the local governments administering SSBCI programs.

   The bulk of this burden will be carried by financial institutions and other financiers that are tasked with data collection. It's been the experience of many SSBCI program managers that administrative burden is the top reason financing partners decline to participate in the program. The requirements put forth in the IFR will serve to only increase administrative burden and complexities, thereby further discouraging participation and limiting the number and nature of financing partners engaged.

   This burden will be most acutely felt by small-size financing partners that do not have the capacity to take on additional administrative responsibilities. This includes Community Development Financial Institutions (CDFIs), credit unions, as well as local and regional banks - all of which the SSBCI community seeks to fully engage in order to serve hard-to-reach and overlooked small businesses.

2) **SSBCI capital recipients can opt out of responding if they are not self-qualifying as a SEDI business. Given the nature and vast number of data elements requested, small businesses are less likely to respond when presented with the option. This in turn will result in an incomplete data set at the program-level, which begs the question of the extent to which the data set is useful to program officials and policy makers.**

   As noted above, the sheer volume of data elements requested will require small businesses to invest a significant amount of time in responding. It's been the experience of many SSBCI program managers that there is a higher response rate from small businesses on short-format questionnaires. Given that small businesses can opt out of responding to some if not all of the questions being asked, it's reasonable to assume that the requirements set forth in the IFR will dampen participation.

Given the optional or “opt out” nature of these requirements, it's also reasonable to assume that Treasury will receive an incomplete data-set at the program-level. It is not advisable to utilize an incomplete data-set to drive administrative or policy decisions, which begs the following questions:

- For what purpose and to what end will this data-set be used?
- Does the value of having an incomplete data-set outweigh the cost of limiting program engagement and efficacy?

3) Small business owners that have historically been underserved by mainstream capital markets may be discouraged from seeking SSBCI financing due to the specter of disclosing the information requested.

While financing partners are prohibited from allowing demographic data to influence financing decisions, businesses may be hesitant to access financing due to concerns that their response will influence their ability to secure a loan or investment. At a minimum, small business owners that have historically been underserved by mainstream capital markets may still be hesitant to complete the data elements requested (see concern about incomplete data-sets above).

Further, lenders and investors may not feel they have the authority to legally collect these data elements.

4) There is no guarantee that the data collected will remain confidential. If the data becomes available at the transaction-level, the small businesses may face a real or perceived risk that disclosed information will influence future credit-decisions and limit access to capital.

In some locations, demographic data collected by government agencies is not considered confidential and is subject to public record requests. Eligible Governments that are subject to this limitation will need to disclose this fact to small businesses when requesting that they provide information as outlined in the IFR. Further, transaction-level data collected by Treasury may be subject to a Freedom of Information Act request thereby making public sensitive information including the race, ethnicity, gender, and sexual orientation of the small business principal(s).

Small businesses asked to disclose this information may face social prejudice if their responses were made public. They may also face a real or perceived risk that disclosed information will influence future credit decisions and limit access to capital. The request to disclose information of this nature may result in false responses and an increase in “opt out” responses (see concerns noted above pertaining to incomplete data-sets).

Recommendations

CDFA and the SSBCI Coalition recommend that Treasury identify an alternative means of collecting the type of information outlined in the IFR, and one that will more likely result in aggregating a complete data-set at the program-level.

If demographic-related reporting must remain a requirement of the SSBCI program, we urge Treasury to:

- Refine the list of data elements collected by eliminating all supplemental data that isn't used to determine a minority-owned business, women-owned business or veteran-owned business.
- Make explicit that financing partners may collect required data as part of their closing process.
- Provide small business owners with information on where to report bad actors if they feel coerced to provide this information or if they feel a financing decision was influenced based on whether they completed data elements and the information they disclosed. This information should be forward-facing and located on Treasury's SSBCI landing page.

Further, there are a number of instances in the IFR where the term 'business' is used, and we believe the correct term should be "principal". In these instances, additional clarity is needed in regard to the data elements pertaining to the business and data elements pertaining to the principal(s). Please contact CDFA for a list of such instances.